

REFILED PURSUANT TO COURT ORDER (DKT. 102)

EXHIBIT C

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1 amend this response after IONpath serves invalidity contentions that properly make a *prima
2 facie* allegation of obviousness (if any) and Fluidigm has had a reasonable opportunity to review
3 any such invalidity contentions.^{1/}

4 Notwithstanding the foregoing objections, Fluidigm states that, should IONpath establish
5 that one or more references qualify as prior art, that those one or more references disclose every
6 limitation of any Asserted Claim, and that a person having skill in the art would have been
7 motivated at the appropriate time to modify and/or combine the one or more references, the
8 Asserted Claim(s) would not have been obvious in view of numerous secondary considerations
9 including commercial success, long felt but unsolved need, praise of others, commercial
10 acquiescence, expressions of skepticism, copying, teaching away, failure of others, simultaneous
11 development, copying, and/or unexpected results.

12 *Nexus*

13 Fluidigm states that there is unquestionably a nexus between its evidence of secondary
14 considerations and the Asserted Claims because that evidence is tied to specific products that
15 practice the invention(s), disclosed and claimed. Fluidigm's proprietary technology CyTOF®,
16 Helios™, and Hyperion™ instruments and Maxpar® reagents (including, but not limited to, as
17 applied in connection with Fluidigm's Therapeutic Insights Services) practice and embody each
18 Asserted Claim as informed by, for example, the respective specifications and disclosures of the
19 '386 Patent, '104 Patent, and '698 Patent. Fluidigm incorporates by reference, as if fully set forth
20 herein, Fluidigm's Confidential Amended Disclosure of Asserted Claims and Infringement
21 Contentions Under Patent L.R. 3-1 in response to Local Patent Rule 3-1(g) and additionally
22 identifies its response to Patent Local Rules 3-2(b) and the documents produced in response
23 thereto, including: FLUIDIGM_00005023-5290, 5340-5341, 5350-5357, 5360-5370, 5371-5522,
24 5523-5527, 5528-5567, and 5568-5573. Fluidigm additionally incorporates by reference its
25

26 ^{1/} Fluidigm understands, consistent with IONpath's counsel J. Furman's May 5, 2020 letter and
27 Fluidigm's counsel N. Williamson's responsive May 6, 2020 email, that IONpath intends to seek
28 leave of court to address the deficiencies in its obviousness contentions. As of this supplemental
response, IONpath has not provided Fluidigm with a draft of IONpath's proposed motion for
leave to amend or any proposed supplement.

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1 March 13, 2020 objections and responses to Defendant IONpath's Interrogatory No. 8, including
 2 but not limited to the exemplary charts further illustrating how a person of ordinary skill in the art
 3 may understand certain of Fluidigm's instruments and reagents to practice the inventions of the
 4 Asserted Claims.

5 In addition, there is a nexus as the Asserted Claims – as practiced by Fluidigm's
 6 proprietary technology CyTOF®, Helios™, and Hyperion™ instruments and Maxpar® reagents
 7 (including, but not limited to, as applied in connection with Fluidigm's Therapeutic Insights
 8 Services) – are the foundational technology that enables the transformative functionality that
 9 drives demand for those products and services. This has been recognized, for example, by the
 10 Human Proteome Organization in connection with its 2019 HUPO Awards. The Human
 11 Proteome Organization expressly noted the original goal "to apply ICP-MS (TOF) technology in
 12 pursuit of high-parameter single cell proteomics," that the technology "was spun out into a
 13 company by the...founders of DVS (now part of Fluidigm Inc)," and that the technology was
 14 "ultimately commercialized [in] the MS-based system called CyTOF." Fluidigm's Helios™ and
 15 Hyperion™ instruments and Maxpar® reagents are based on the CyTOF technology. "Setting the
 16 new standard in human immune profiling, this profiling system provides the first complete
 17 sample-to-answer solution to quantify 37 different immune cell populations using a simple single-
 18 tube workflow with automated five-minute results reporting." "CyTOF is a transformative
 19 technology that is instrumental in driving groundbreaking discoveries in immunology, cancer,
 20 stem cell research, neurology and many more biological areas by enabling researchers to deeply
 21 profile protein biomarkers from cells and tissues at single-cell resolution." HUPO's associated
 22 press release is publicly available online at <https://www.hupo.org/2019-Awards>, and Fluidigm's
 23 associated press release is publicly available online at <http://investors.fluidigm.com/news-releases/news-release-details/cytof-inventors-receive-prestigious-science-and-technology-award>.

25 Fluidigm further reserves its right to supplement its response generally, and regarding
 26 "nexus" specifically, as the case proceeds. For example, IONpath has elected to assert
 27 obviousness based upon overbroad and non-specific "groupings" of prior art for all Asserted